

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Helayne Seidman,

Plaintiff,

- against -

Apartment Therapy LLC.,

Defendant.

Docket No. 18-cv-12138

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Helayne Seidman (“Seidman” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Apartment Therapy, LLC. (“Apartment Therapy” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Paul Loebach, owned and registered by Seidman, a New York based professional photographer. Accordingly, Seidman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Seidman is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 16 St. Marks Place, Apt. 4B, New York, NY 10003.

6. Upon information and belief, Apartment Therapy is a foreign business corporation duly organized and existing under the laws of the State of New York, with a place of business at 270 Lafayette Street, Suite 1204, New York, NY 10012. Upon information and belief Apartment Therapy is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Apartment Therapy has owned and operated a website at the URL: www.apartmenttherapy.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Seidman photographed Paul Loebach (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Seidman then licensed the Photograph to the Washington Post. On August 31, 2008 the Washington Post ran an article that featured the Photograph entitled “A ‘Starving Artist’ Whose Half-Glass Is Full.” See URL <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/29/AR2008082900730.html>. Seidman’s name was featured in a gutter credit identifying her as the photographer of the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

9. Seidman is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-024-354 and titled "Paul Loebach". See Exhibit C.

B. Defendant's Infringing Activities

11. On or about July 27, 2010, Apartment Therapy ran an article on the Website. See URL <https://www.apartmenttherapy.com/designer-portfo-1-122966>. The article prominently featured the Photograph as the banner image and social media-share image of the article. True and correct copies of a screenshots of the article as appeared on the website, and social media is attached hereto as Exhibit D.

12. Apartment Therapy did not license the Photograph from Plaintiff for its article, nor did Apartment Therapy have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Apartment Therapy infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Apartment Therapy is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Apartment Therapy be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 21, 2018

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